



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

PRESBYTERIAN HOSPITAL PLANO
3255 W. PIONEER PKWY
ARLINGTON TX 76013

DWC Claim #:

Injured Employee:

Date of Injury:

Employer Name:

Insurance Carrier #:

Respondent Name

CONTINENTAL CASUALTY CO

Carrier's Austin Representative Box

47

MFDR Tracking Number

M4-07-7563-02

MFDR Date Received

July 23, 2007

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated July 19, 2007: "HRA has been hired by Presbyterian Hospital to audit their Workers Compensation claims. We have found in this audit you have not paid the appropriate reimbursement according to the Acute Care Inpatient Hospital Fee Guideline. Per the ACIHFG, claims with charges over \$40,000 are to be payable at 75% of charges. We don't believe this rule has been changed legislatively as of today; therefore, we are still asking carriers to reimburse as such. The cost of high dollar implants is increasing which, in turn, has affected our cost per claim. Though we appreciate DWC of TDI's research stating that when the ACIHFG was updated, there were not as many high dollar (stoploss) claims as there currently. While this may be true, hospitals can attribute a higher influx of stoploss claims to better (and in most cases) more expensive implantables as is the case with the attached claim. "

Amount in Dispute: \$15,634.76

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated August 10, 2007: "CARRIER'S POSITION: The Stop Loss method does not apply in this case ... **Futhermore, there is no proof that the services were unusually extensive and costly** ... The Requestor/provider has the burden to show that the amount of reimbursement it seeks is fair and reasonable reimbursement within the meaning of section 413.011 of the Act.

Response Submitted by: Continental Casualty Company

Respondent's Supplemental Position Summary Dated September 23, 2011: "Because Requestor has not established that the services it provided were unusually costly and unusually extensive, it is not entitled to reimbursement under the stop-loss exception but should instead be reimbursed under the standard per diem reimbursement method of the guideline. Under the per diem method, Requestor is entitled to \$15,588.64. However, Requestor was inadvertently paid a total of \$34,634.75. Because Carrier has already paid Requestor in excess of this amount, it is entitled to a refund of the overpayment pursuant to the Texas labor Code Section 413.016(a) which states, "The division shall order a refund of charges paid to a health care provider excess of those allowed by the medical policies or fee guidelines."

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
January 22, 2007 through January 25, 2007	Inpatient Hospital Services	\$15,634.76	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits

- W1 – Workers compensation state fee schedule adjustment
- 400-001 – The inpatient reimbursement has been based on per diem, stoploss factor or billed charges whichever is less
- 16 – Claim/service lacks information which is needed for adjudication. Additional information is supplied using remittance advice remarks codes whenever appropriate. This charge to be effective 4/1/2007; At least one Remark Code must be provided
- 855-022 – Charge denied due to lack of sufficient documentation of services rendered \$0.00.
- 855-002 – Recommended allowance is in accordance with workers compensation medical fee schedule guidelines \$3,354.00
- 855-022 – Recommended allowance is in accordance with workers compensation medical fee schedule guidelines.

Dispute M4-07-7563 was originally decided on September 02, 2008 and subsequently appealed to a contested case hearing at the State Office of Administrative Hearings (SOAH) under case number 454-09-0424.M4. This dispute was then remanded to the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) pursuant to a February 16, 2009 SOAH order of remand. As a result of the remand order, the dispute was re-docketed at medical fee dispute resolution and is hereby reviewed

Issues

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?
5. Is the respondent entitled to an order or reimbursement or refund?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the

requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed..." Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$67,027.35. The division concludes that the total audited charges exceed \$40,000.
2. The requestor in its original position statement asserts that "HRA has been hired by Presbyterian Hospital to audit their Workers Compensation claims. We have found in this audit you have not paid the appropriate reimbursement according to the Acute Care Inpatient Hospital Fee Guideline. Per the ACIHFG, claims with charges over \$40,000 are to be payable at 75% of charges. We don't believe this rule has been changed legislatively as of today; therefore, we are still asking carriers to reimburse as such." In its position statement, the requestor presupposes that it is entitled to the stop loss method of payment because the audited charges exceed \$40,000. As noted above, the Third Court of Appeals in its November 13, 2008 rendered judgment to the contrary. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services." The requestor failed to discuss or demonstrate that the particulars of the admission in dispute that constitute unusually extensive services; therefore, the division finds that the requestor did not meet 28 TAC §134.401(c)(6).
3. In regards to whether the services were unusually costly, the requestor states "The cost of high dollar implants is increasing which, in turn, has affected our cost per claim. Though we appreciate DWC of TDI's research stating that when the ACIHFG was updated, there were not as many high dollar (stoploss) claims as there currently. While this may be true, hospitals can attribute a higher influx of stoploss claims to better (and in most cases) more expensive implantables as is the case with the attached claim." The third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must **demonstrate** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The requestor failed to demonstrate that the particulars of the admission in dispute that constitute unusually costly services; therefore, the division finds that the requestor failed to meet 28 TAC §134.401(c)(6).
4. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
 - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission..." The length of stay was three days. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of three days results in an allowable amount of \$3,354.00.
 - The division notes that 28 Texas Administrative Code §134.401(c)(4)(A), states "When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274)."

Review of the requestor's medical bills finds that the following items were billed under revenue code 0278 and are therefore eligible for separate payment under §134.401(c)(4)(A) as follows:

Charge Code	Itemized Statement Description	Cost Invoice Description	UNITS / Cost Per Unit	Total Cost	Cost + 10%
3640566	Tray TIB MBT	Tray TIB MBT Revision Cem Sz4	1 at \$3,208.16 ea	\$3,208.16	\$3,528.98
3641134	Cement Bone	No invoice provided	\$0.00	\$0.00	\$0.00
3646029	Insert Tib Si	Insert Tib Sigma Sz410mm	1 at \$1,718.66 ea	\$1,718.66	\$1,890.53
3761131	Rod Tibial Fl	Rod Tibial fluted pfc 75x20mm	1 at \$865.69 ea	\$865.69	\$952.26
3763327	Tube suction	Tube suction kamvac	1 at \$20.26 ea	\$20.26	\$22.29
3763791	Patella Oval	Patella Oval Dome pfc 38mm	1 at \$495.97 ea	\$495.97	\$545.57
3764591	FEM LFT Sz4 P	FEM LFT Sz4 PFC Sigma-TC3	1 at \$4,137.50 ea	\$4,137.50	\$4,551.25
3765917	Cement Bone	No invoice provided	\$0.00	\$0.00	\$0.00
TOTAL ALLOWABLE				\$11,490.86	

The division concludes that the total allowable for this admission is \$3,354.00 + 11,490.86. The respondent issued payment in the amount of \$34,635.75. Based upon the documentation submitted, no additional reimbursement can be recommended.

5. In its response to the request for medical fee dispute resolution, the insurance carrier and respondent in this dispute stated "...Requestor was inadvertently paid a total of \$34,634.75. Because Carrier has already paid Requestor in excess of this amount, it is entitled to a refund of the overpayment pursuant to the Texas labor Code Section 413.016(a)..." Texas Labor Code §408.0271 states, in pertinent part:
- (a) If the health care services provided to an injured employee are determined by the carrier to be **inappropriate** [emphasis added], the insurance carrier shall:

- (1) notify the health care provider **in writing** of the carrier's decision; and
- (2) demand a refund by the health care provider of the **portion of payment** [emphasis added] on the claim that was received by the health care provider for the inappropriate services."

Review of the documentation submitted finds that the respondent has not identified the "inappropriate" services, nor has it demonstrated the health care provider was notified in writing of its demand for a specific (dollar amount) refund prior to the medical fee dispute being filed.

Furthermore, applicable 28 TAC §133.260, 31 *Texas Register* 3544, effective May 2, 2006, provided, in pertinent part, that:

- (b) An insurance carrier shall request a refund within 240 days from the date of service or 30 days from completion of an audit performed in accordance with §133.230 (relating to Insurance Carrier Audit of a Medical Bill), whichever is later, when it determines that inappropriate health care was previously reimbursed, or when an overpayment was made for health care provided.
- (c) The insurance carrier shall submit the refund request to the health care provider in an explanation of benefits in the form and manner prescribed by the Division."

Review of the documentation provided by the respondent finds that the insurance carrier did not present a refund request to the health care provider within the time-frame specified, nor did the carrier submit any refund request to the health care provider in an explanation of benefits as required. The division concludes that the insurance carrier has not met the requirements of either Texas Labor Code §408.0271, nor has it met the requirements of applicable 28 TAC §133.260. For those reasons, the respondent's request for an order of reimbursement is not proper, and is not supported. An order of reimbursement for the respondent is therefore not recommended

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to discuss and demonstrate that the disputed inpatient hospital admission involved unusually extensive, and unusually costly services. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

10/10/12

Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.